

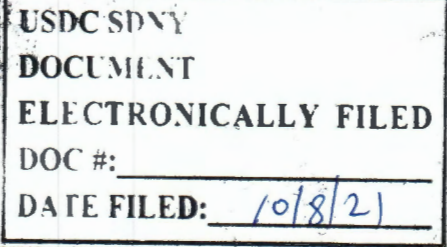
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
JOE BRANDS LLC d/b/a WILDKIN,

Plaintiff,

- against -

EDCMAKER, an unknown Chinese business
entity, d/b/a LUKEIGHT, and BINGSHUANG
LU, an unknown individual,

Defendants.



21 Civ. 5278 (LLS)

ORDER

On August 17, 2021, plaintiff moved to renew the Motion for Temporary Restraining Order pending service of defendants in China. Dkt. No. 11. In accordance with the Court's instruction, plaintiff mailed the complaint and motion to defendant Bingshaung Lu at his address in China, who acknowledged receipt of the documents via email, see Dkt. No. 13, but has filed no answer or formal objection to plaintiff's motion.

Plaintiff writes again renewing the Motion for Temporary Restraining Order. See Dkt. No. 12. The Court finds as follows:

1. Plaintiff's counsel has taken sufficient steps to notify defendants of its claims. Plaintiff filed multiple takedown notices with Amazon, to which defendant Lu replied and sent Amazon a "counter-notification", providing an address in China and stating "I hereby consent to the jurisdiction of any United States federal district court in which Amazon may be found. I agree to accept service of process from the complainant or an agent of such person." See August 17, 2021 Letter, Dkt. No. 11

at 15. While undertaking the process of formally serving the defendants in China, plaintiff also mailed the Complaint and Motion for Temporary Restraining Order to defendant Lu at the address he provided in his "counter-notification". See Dkt. No. 13. The documents were delivered to the address on September 2, 2021, and defendant Lu acknowledged receipt in an email to counsel and plaintiff on that same day. Id.

Based on those facts, plaintiff has established sufficient notice for the purposes of issuing a preliminary injunction. Defendants' right to argue lack of jurisdiction is reserved to them.

2. Plaintiff has also shown a substantial likelihood of success on the merits that defendants are infringing plaintiff's copyright in the pattern at issue. See Memorandum in Support of TRO, Dkt. No. 4. Plaintiff owns a valid copyright to the Trains, Planes and Trucks pattern, which it has been using since 1991. Id. at 2, 4; see also Compl., Ex. B. Defendant Bingshuang subsequently obtained copyright registration for a substantially similar, if not identical, pattern in 2020, which is now used in products defendants offer for sale on Amazon. See Memorandum in Support of TRO at 2; see also Compl., Ex. C.; September 28, 2021 Letter, Ex. 1. "When a plaintiff establishes a prima facie case of copyright infringement, irreparable harm is presumed", for preliminary injunction purposes. See Markowitz Jewelry Co. v. Chapal/Zenray, Inc., 988 F. Supp. 404, 406 (S.D.N.Y. 1997)

(internal citations omitted).

Therefore, Defendants EDCMaker d/b/a Lukeight and Bingshuang LU are enjoined from disclosing, disseminating, using, manufacturing or producing Wildkin's copyright protected pattern, and from removing, or causing another person to remove, Wildkin's products from Amazon.com's website.

3. Plaintiff's requests for orders directing Amazon to take certain actions to prevent further infringement are denied, without prejudice. Amazon is not a party to this suit, it has not been served, and it is therefore not presently subject to the jurisdiction of this Court in this case.

So Ordered.

Dated: New York, New York
October 8, 2021

Louis L. Stanton
LOUIS L. STANTON
U.S.D.J.